

1 **Rule 1.11. Special Conflicts of Interest for Former and Current Government Employees.**

2 (a) Except as law may otherwise expressly permit, a licensed paralegal practitioner who has
3 formerly served as a public officer or employee of the government:

4 (a)(1) is subject to Rule 1.9(c); and

5 (a)(2) shall not otherwise represent a client in connection with a matter in which the licensed
6 paralegal practitioner participated personally and substantially as a public officer or employee,
7 unless the appropriate government agency gives its informed consent, confirmed in writing, to
8 the representation.

9 (b) When a licensed paralegal practitioner is disqualified from representation under
10 paragraph (a), no attorney or licensed paralegal practitioner in a firm with which that licensed
11 paralegal practitioner is associated may knowingly undertake or continue representation in such
12 a matter unless:

13 (b)(1) the disqualified licensed paralegal practitioner is timely screened from any
14 participation in the matter and is apportioned no part of the fee therefrom; and

15 (b)(2) written notice is promptly given to the appropriate government agency to enable it to
16 ascertain compliance with the provisions of this Rule.

17 (c) Except as law may otherwise expressly permit, a licensed paralegal practitioner having
18 information that the licensed paralegal practitioner knows is confidential government
19 information about a person acquired when the licensed paralegal practitioner was a public officer
20 or employee may not represent a private client whose interests are adverse to that person in a
21 matter in which the information could be used to the material disadvantage of that person. As
22 used in this Rule, the term “confidential government information” means information that has
23 been obtained under governmental authority and which at the time the rule is applied, the
24 government is prohibited by law from disclosing to the public or has a legal privilege not to
25 disclose and which is not otherwise available to the public. A firm with which that licensed
26 paralegal practitioner is associated may undertake or continue representation in the matter only if
27 the disqualified licensed paralegal practitioner is screened from any participation in the matter
28 and is apportioned no part of the fee therefrom.

29 (d) Except as law may otherwise expressly permit, a licensed paralegal practitioner serving as
30 a public officer or employee:

31 (d)(1) is subject to Rules 1.7 and 1.9; and

32 (d)(2) shall not:

33 (d)(2)(i) participate in a matter in which the licensed paralegal practitioner participated
34 personally and substantially while in private practice or nongovernmental employment, unless
35 the appropriate government agency gives its informed consent, confirmed in writing; or

36 (d)(2)(ii) negotiate for private employment with any person who is involved as a party or as
37 counsel for a party in a matter in which the licensed paralegal practitioner is participating
38 personally and substantially.

39 (e) As used in this Rule, the term “matter” includes:

40 (e)(1) any judicial or other proceeding, application, request for a ruling or other
41 determination, contract, claim, controversy, investigation, charge, accusation, arrest or other
42 particular matter involving a specific party or parties; and

43 (e)(2) any other matter covered by the conflict of interest rules of the appropriate government
44 agency.

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46 Comment

47 [1] A licensed paralegal practitioner, who has served or is currently serving as a public officer or
48 employee is personally subject to the licensed paralegal Practitioner Rules of Professional
49 Conduct, including the prohibition against concurrent conflicts of interest stated in Rule 1.7. In
50 addition, such a licensed paralegal practitioner may be subject to statutes and government
51 regulations regarding conflicts of interest. Such statutes and regulations may circumscribe the
52 extent to which the government agency may give consent under this Rule. See Rule 1.0(f) for the
53 definition of informed consent.

54 [2] Paragraphs (a)(1), (a)(2) and (d)(1) restate the obligations of an individual licensed paralegal
55 practitioner who has served or is currently serving as an officer or employee of the government
56 toward a former government or private client. Rule 1.10 is not applicable to the conflicts of
57 interest addressed by this Rule. Rather, paragraph (b) sets forth a special imputation rule for
58 former government licensed paralegal practitioners that provides for screening and notice.
59 Because of the special problems raised by imputation within a government agency, paragraph (d)
60 does not impute the conflicts of a licensed paralegal practitioner currently serving as an officer or

61 employee of the government to other associated government officers or employees, although
62 ordinarily it will be prudent to screen such licensed paralegal practitioners.

63 [3] Paragraphs (a)(2) and (d)(2) apply regardless of whether a licensed paralegal practitioner is
64 adverse to a former client and are thus designed not only to protect the former client, but also to
65 prevent a licensed paralegal practitioner from exploiting public office for the advantage of
66 another client. For example, a licensed paralegal practitioner who has pursued a claim on behalf
67 of the government may not pursue the same claim on behalf of a later private client after the
68 licensed paralegal practitioner has left government service, except when authorized to do so by
69 the government agency under paragraph (a). As with paragraphs (a)(1) and (d)(1), Rule 1.10 is
70 not applicable to the conflicts of interest addressed by these paragraphs.

71 [4] This Rule represents a balancing of interests. On the one hand, where the successive clients
72 are a government agency and another client, public or private, the risk exists that power or
73 discretion vested in that agency might be used for the special benefit of the other client. A
74 licensed paralegal practitioner should not be in a position where benefit to the other client might
75 affect performance of the licensed paralegal practitioner's professional functions on behalf of the
76 government. Also, unfair advantage could accrue to the other client by reason of access to
77 confidential government information about the client's adversary obtainable only through the
78 licensed paralegal practitioner's government service. On the other hand, the rules governing
79 licensed paralegal practitioners presently or formerly employed by a government agency should
80 not be so restrictive as to inhibit transfer of employment to and from the government. The
81 government has a legitimate interest in attracting qualified licensed paralegal practitioners as
82 well as in maintaining high ethical standards. Thus a former government licensed paralegal
83 practitioner is disqualified only from particular matters in which the licensed paralegal
84 practitioner participated personally and substantially. The provisions for screening and waiver in
85 paragraph (b) are necessary to prevent the disqualification rule from imposing too severe a
86 deterrent against entering public service. The limitation of disqualification in paragraphs (a)(2)
87 and (d)(2) to matters involving a specific party or parties, rather than extending disqualification
88 to all substantive issues on which the licensed paralegal practitioner worked, serves a similar
89 function.

90 [5] When a licensed paralegal practitioner has been employed by one government agency and
91 then moves to a second government agency, it may be appropriate to treat that second agency as
92 another client for purposes of this Rule, as when a licensed paralegal practitioner is employed by
93 a city and subsequently is employed by a federal agency. However, because the conflict of
94 interest is governed by paragraph (d), the latter agency is not required to screen the licensed
95 paralegal practitioner as paragraph (b) requires a law firm to do. The question of whether two
96 government agencies should be regarded as the same or different clients for conflict of interest
97 purposes is beyond the scope of these Rules.

98 [6] Paragraphs (b) and (c) contemplate a screening arrangement. See Rule 1.0(m) (requirements
99 for screening procedures). These paragraphs do not prohibit a licensed paralegal practitioner
100 from receiving a salary or partnership share established by prior independent agreement, but that
101 licensed paralegal practitioner may not receive compensation directly relating to the fee in the
102 matter in which the licensed paralegal practitioner is disqualified.

103 [7] Notice, including a description of the screened licensed paralegal practitioner's prior
104 representation and of the screening procedures employed, generally should be given as soon as
105 practicable after the need for screening becomes apparent.

106 [8] Paragraph (c) operates only when the licensed paralegal practitioner in question has
107 knowledge of the information, which means actual knowledge; it does not operate with respect to
108 information that merely could be imputed to the licensed paralegal practitioner.

109 [9] Reserved.

110 [10] For purposes of paragraph (e) of this Rule, a "matter" may continue in another form. In
111 determining whether two particular matters are the same, the licensed paralegal practitioner
112 should consider the extent to which the matters involve the same basic facts, the same or related
113 parties, and the time elapsed.